

COPY

STATE OF MICHIGAN
BEFORE THE MICHIGAN JUDICIAL TENURE COMMISSION

COMPLAINT AGAINST

HON. GERARD TRUDEL
Judge, 24th Judicial District Court
6515 Roosevelt Road
Allen Park, Michigan 48101-2524

FORMAL COMPLAINT NO. 68

**RESPONDENT'S ANSWER TO COMPLAINT
AND AFFIRMATIVE DEFENSES**



Respondent Hon. Gerard Trudel, by his Attorney Philip J. Thomas, responds to the Michigan Judicial Tenure Commission's ("JTC") Formal Complaint, as follows:

PRELIMINARY STATEMENT

In May, 2002 Respondent retained Philip J. Thomas to represent him concerning matters then under investigation by the JTC. Upon being served with Formal Complaint 68, Respondent's counsel noted that roughly one half of the Formal Complaint (pages 11 – 20) is devoted to allegations dating back in some instances to the mid-1990's. Those allegations resulted in a consent suspension agreement earlier this year. Respondent's counsel has no familiarity with those allegations, and as of this writing has not obtained access to Respondent's former

counsel's client file. Respondent's counsel was retained to represent Respondent concerning FC 68 on, or about, July 22, 2002. Respondent's counsel did not want to delay this matter by requesting an extension for filing Respondent's Answer to the Formal Complaint. Respondent and Respondent's counsel have attempted to submit the most complete, thorough answer possible, without the prior client file referenced above. Respondent requests that he be provided a reasonable opportunity to amend this answer, after he receives the prior client file, which has been requested by Respondent in writing.

ANSWER

1. Respondent admits he has been a judge of the 24th Judicial District Court since January 1, 1993.
2. Respondent admits he consented to the imposition of discipline as entered by the Michigan Supreme Court on January 23, 2002, being Order 120741.

COUNT I

3. Respondent admits that he signed an *Application For Mediation Or Hearing - Form A* (BWC-104A, Rev. 8/96) on April 23, 2002. Respondent further acknowledges that the date of injury is listed as January 24, 2002, on his

Application For Mediation Or Hearing, that was the date he was required to attend counseling sessions with a mental health care professional as a condition of his employment.

4. In answering paragraph 4, Respondent denies the allegations for the reason they are untrue in the manner and form alleged. Further answering, Respondent states that the *Application For Mediation Or Hearing - Form A* (BWC-104A, Rev. 8/96) is a very limited form, created by the requirements of M.C.L. 418.222(3), which states in its entirety:

(3) The application for mediation or hearing shall be as prescribed by the bureau and shall contain factual information regarding the nature of the injury, the date of injury, the names and addresses of any witnesses, except employees currently employed by the employer, the names and addresses of any doctors, hospitals, or other health care providers who treated the employee with regard to the personal injury, the name and address of the employer, the dates on which the employee was unable to work because of the personal injury, whether the employee had any other employment at the time of, or subsequent to, the date of the personal injury and the names and addresses of the employers, and any other information required by the bureau.

Nowhere, within the *Application For Mediation Or Hearing - Form A* is Respondent required to state that he was serving a disciplinary suspension, nor was it relevant to the purpose of the application. Furthermore, as part of

the Commission's *Decision and Recommendation for Discipline*, which was adopted by the Supreme Court as its finding of facts and conclusions of law, Respondent was required to obtain mental health care assistance as follows:

Counseling and/or assistance with anger management, as determined appropriate by a mental health care professional of the respondent's choice, licensed as such by the State of Michigan, for the remainder of his term as judge, i.e., until December 31, 2004, or until he is released by the mental health care professional, in which case the mental health care professional will provide a letter to the Commission expressing his/her opinion that the respondent no longer needs treatment. By agreeing to the imposition of discipline pursuant to this Decision and Recommendation, the respondent also agrees that any such letter opining that the respondent no longer needs treatment shall be included in the public file in this matter. The therapy will occur on a schedule as determined appropriate by the health care professional, who shall provide the Commission with quarterly reports detailing the respondent's attendance at those sessions. The respondent will request the mental health care provider in writing to convey that information to the Commission and will provide the Commission with a copy of that request. [Page 5-6, Michigan Supreme Court Order 120741.]

Furthermore, neither Respondent's employer, nor the Bureau of Workers' Disability Compensation have determined that anything stated in Respondent's *Application For Mediation Or Hearing - Form A* is improper or incorrect.

5. Respondent admits that the *Application For Mediation Or Hearing - Form*

A (BWC-104A, Rev. 8/96), which he signed on April 23, 2002, contained the following statement:

CERTIFICATION AND SIGNATURE

I hereby certify that the above information is true to the best of my knowledge. I also certify that I have, as of this date, mailed to my employer or its insurance carrier copies of any medical records relevant to this claim that are in my possession.

6. Respondent admits that he signed the *Application For Mediation Or Hearing - Form A* (BWC-104A, Rev. 8/96) on April 23, 2002, to obtain reasonable medical treatment for severe depression as provided by M.C.L. 418.315(1). To Respondent's information and belief, upon the advice of his worker's compensation attorney, his *Application For Mediation Or Hearing* was proper and lawful.

Respondent further provides that Michigan Supreme Court Order 120741, which became effective on January 24, 2002, stated in relevant part, the following:

In addition, we observe that the recommendation of the Commission is premised in part on the respondent's acceptance of five additional provisions, which have been agreed upon by the Commission and the respondent, as set forth below. These are not encompassed within our

order, since they are not judicial discipline as described in Const. 1963, art 6, § 30(2). However, in accordance with rules governing judicial discipline, the Commission may recommend further discipline if the respondent fails to comply with these terms:

* * *

(3) Counseling and/or assistance with anger management, as determined appropriate by a mental health care professional of the respondent's choice, licensed as such by the State of Michigan, for the remainder of his term as judge, i.e., until December 31, 2004, or until he is released by the mental health care professional, in which case the mental health care professional will provide a letter to the Commission expressing his/her opinion that the respondent no longer needs treatment. By agreeing to the imposition of discipline pursuant to this Decision and Recommendation, the respondent also agrees that any such letter opining that the respondent no longer needs treatment shall be included in the public file in this matter. The therapy will occur on a schedule as determined appropriate by the health care professional, who shall provide the Commission with quarterly reports detailing the respondent's attendance at those sessions. The respondent will request the mental health care provided in writing to convey that information to the Commission and will provide the Commission with a copy of that request. [Page 5-6, Michigan Supreme Court Order 120741.]

Respondent further provides that when he signed the *Application For Mediation Or Hearing* on April 23, 2002, he had nearly completed his 90 day suspension without pay as ordered by the Michigan Supreme Court on

January 23, 2002. As of this date, Respondent has still been unable to pay the expense of therapy as required by the Commission in its *Decision and Recommendation for Discipline* as adopted by the Michigan Supreme Court on January 23, 2002. As noted by the Supreme Court in its Order, Respondent is subject to further discipline if he fails to comply with the Commission's requirement to attend therapy with a licensed mental health care professional. However, the Commission, herein, is attempting to impose further discipline upon Respondent for lawfully requesting his employer to pay the cost of reasonable medical treatment for his depression, as provided by M.C.L. 418.315(1); in order to comply with the JTC's *Decision and Recommendation for Discipline*. Certainly the JTC would have recommended further discipline if Respondent had discontinued his therapy. Fortunately, Respondent's therapist agreed to allow Respondent the necessary time to obtain *Worker's Disability Compensation* benefits in order to pay the expense of his required therapy.

7. Respondent denies the JTC's allegations (and legal conclusions) as contained in paragraph 7.

**RESPONDENT'S PATTERN OF EXTENDED ABSENCES
CLAIMING MENTAL DISABILITY**

8. Respondent denies the allegations for the reason they are untrue in the manner and form alleged. Respondent suffers from depression, which has not and does not "interfere" with his ability to perform his judicial duties. Further answering said paragraph, Respondent states that on three occasions over the past two years, he has taken his allowed vacation time and additional medical leave time when necessary, upon the advice of medical and mental health care professionals.

Respondent further provides that in the seven and one-half years, between January 1, 1993, when he assumed the office of district court judge and July 1, 2000, he was never absent from work for an illness or other medical reason. No amount of annual medical leave days for a district court judge has ever been established to Respondent's knowledge. However, the employee's of the 24th Judicial District Court are allowed 13 medical leave days annually. Over the term of Respondent's service as a district court judge, he has not averaged over 13 days annually for medical leave.

9. Respondent denies the allegations for the reason they are untrue in the

manner and form alleged. Further answering, Respondent states that on Sunday, July 2, 2000, he was hospitalized for severe depression until Wednesday, July 5, 2000. His next day to return to work would have been July 5, 2000. However, upon the advice of his doctor, Respondent did not return to work. After speaking to Ms. Delores K. Van Horn (Region One Administrator) on July 5, 2000, it was agreed that Respondent should take a leave of absence. Ms. Van Horn, who for a number of months had encouraged Respondent to take a leave of absence, suggested that Respondent determine upon his return to work, whether to designate the absence as vacation or medical leave. Upon returning to work, on or about October 1, 2000, Respondent applied his vacation time to his absence and the remaining days were listed as Respondent's first medical absence in nearly eight years. On or about August 14, 2000, Respondent drove to California. Part of the time Respondent was on leave was spent in Newport Beach, California. Further, where Respondent was physically located while on leave is irrelevant.

Respondent further provides that his leave of absence was the result of numerous stressful factors, which included the following :

- A. For nearly five (5) months, Respondent served as the

only judge of the 24th Judicial District Court. During the time period between February and July 2000, Respondent, with very limited help from visiting judges and the court's magistrates, adjudicated the full caseload of the 24th Judicial District Court. To Respondent's knowledge, the approximate 38,000 annual caseload was the highest individual caseload of any judge in the State of Michigan at the time;

B. On the same day that Respondent assumed the sole judicial duties of the court, his former wife commenced divorce proceedings after nearly 18 years of marriage;

C. Respondent's former wife made numerous false accusations against him, which were widely reported by the media;

D. Respondent's daughter became a victim of severe parental alienation caused by Respondent's former wife;

E. Respondent's father was diagnosed with colon cancer for the second time in ten years and surgery was performed; and

F. The Michigan Judicial Tenure Commission (in violation of MCR 9.222) publicly begun its investigation of Respondent, which was widely reported by the media.

Respondent further provides that, at all times during his leave of absence in 2000, he continued his administrative duties as chief judge of the

court. Respondent was in contact by telephone, nearly daily, with the court administrator and other personnel of the court. Numerous administrative decisions were made by Respondent during his leave of absence.

10. Respondent admits that his doctor submitted a letter to the State Court Administrative Office as requested by Ms. Delores K. Van Horn. The letter is dated July 26, 2000. However, the letter bears a facsimile inscription which displays that it was sent from the 24th Judicial District Court on August 11, 2000, during the time period of Respondent's leave of absence.
11. Respondent denies the allegations for the reason they are untrue in the manner and form alleged. Respondent incorporates his answers as stated above.
12. Respondent admits that his therapist submitted a letter to the State Court Administrative Office as requested by Ms. Delores K. Van Horn. The letter is dated June 25, 2001. The letter bears a date stamp which displays that it was received by the State Court Administrative Office Region 1 on July 17, 2001, during the time period of Respondent's leave of absence.
13. Respondent admits that on April 24, 2002, he advised Judge John T. Courtright and Court Administrator Jill A. Hilliker that he would be taking a

medical leave of absence, as a result of further depression directly resulting from the Commission's newest investigation, initiated during Respondent's period of suspension. Respondent is not aware of any requirement to provide *advance* notice of a medical leave of absence under the circumstances presented in this matter. In further answer of the JTC's innuendo that matters pending before the court were disrupted in some way, no docket had been scheduled for Respondent on April 24, 2002, and to Respondent's information and belief, no case was rescheduled as a result of the court being advised of Respondent's leave of absence on April 24, 2002.

14. Respondent admits the JTCs' allegations in this paragraph.
15. Respondent admits the JTC's allegations in this paragraph.
16. Respondent denies the allegations for the reason they are untrue in the manner and form alleged. Respondent never received a letter from Mr. John Ferry dated May 9, 2002. However, the JTC subsequently provided a copy of the letter in question to Respondent.
17. Respondent admits the JTC's allegations in this paragraph. Respondent would add that he had no control over his medical care providers and did not have the ability to control their decisions.

18. Respondent admits the JTC's allegations in this paragraph. However, Respondent would add that the primary "stressor" referred to by Dr. Sinott was the fact that Respondent's Court's insurance carrier denied coverage regarding Respondent's claim that he be allowed to retain counsel to represent him in these proceedings. The basis of the denial centered around the fact that Respondent's conduct as alleged in the JTC's investigation did not result from Respondent's "on the bench" conduct. Respondent had been without a paycheck since early 2002 and had no funds to retain counsel. Respondent was forced to represent himself in these proceedings and that fact had an impact, as referenced by Dr. Sinnott.
19. Respondent denies the allegations for the reason they are untrue in the manner and form alleged. Respondent visited his office on occasion to obtain documents and information in regards to the JTC's investigation, to obtain his mail and sign a document required by the State Court Administrative Office. On many occasion's Respondent spoke with the chief judge and/or the court administrator. Lastly, Respondent is not aware of any requirement forbidding him to go to his office while on a medical leave and/or a suspension.
20. Respondent admits the JTC's allegations contained in this paragraph.

21. Respondent admits the allegations contained in this paragraph. Judge Trudel would add that on May 21, 2002 his current counsel (the undersigned) sent an appearance by fax and regular mail to the JTC. Although the Court Administrator's office was not sent a copy of that appearance, it does appear that the JTC and the State Court Administrator's office have shared information relating to this matter. Judge Trudel feels that if the State Court Administrator's office wrote directly to Judge Trudel, with the knowledge that he was represented by counsel, his current counsel should have been provided a copy of the alleged letter. When Respondent spoke with Ms. Van Horn subsequently, she expressed no concern about Respondent failing to provide the requested notice as referenced in her letter.
22. Respondent admits that he returned to work on May 29, 2002, after consulting with his therapist and current attorney. When Respondent was finally able to retain counsel to represent him in these proceedings, the stress of representing himself before the JTC eased and, Respondent felt able to return to work. His doctor approved him doing so. Upon Respondent's return, Judge Courtright came to his office and welcomed him back to work.

No requests of any kind were made by the chief judge at that time, or since, concerning Respondent's leave.

23. Respondent denies the allegations for the reason they are untrue in the manner and form alleged. When Respondent returned to work on May 29, 2002, he had been absent for only 24 days of work. The additional 11 days were weekends and a holiday. Respondent may still allocate his annual vacation time to his absence, which would result in no medical leave time being applied to his absence.
24. In answering paragraph 24, Respondent denies the allegations for the reason they are untrue in the manner and form alleged. In further answer to the allegations, Respondent provides the following for each of the years in question:

2000: Respondent incorporates his answer provided to paragraph 9;

2001: Respondent was advised by his gastroenterologist that a section of his colon had to be surgically removed, after test results were received from a colonoscopy performed on June 1, 2001. His doctor attributed the principal cause of his deteriorated colon to be stress related.

After further consulting with his other

doctors, it was decided that Respondent should take a vacation/medical leave of absence. Respondent's gastroenterologist agreed the surgery could be performed upon Respondent's return.

A colonoscopy was immediately performed upon Respondent's return. The test results indicated that the deteriorated condition of Respondent's colon had been reversed and that his condition had greatly improved. Respondent's doctor attributed the reversal to Respondent's lack of stress during his leave of absence. No surgery was then necessary. Respondent has since been diagnosed with Crohn's disease which is being treated with medicine.

2002: Respondent incorporates his answer provided to paragraphs 22 and 23. Respondent further states that after retaining his present attorney to represent him in the recent investigation commenced by the Commission, he was then capable of returning to work and performing his judicial duties.

25. Respondent denies the allegations for the reason they are untrue in the manner and form alleged. In further answer to the allegations, Respondent states that the State Court Administrative Office was advised of the reasons for Respondent's absences and his whereabouts at all times. Further, based upon information and belief, Respondent's former attorney had advised the

Executive Director and the Judicial Tenure Commission, of the reasons for Respondent's absences and his whereabouts. No concern was ever expressed by the State Court Administrative Office or the Judicial Tenure Commission concerning where Respondent went on leaves during the applicable time periods.

26. Respondent denies the allegations for the reason they are untrue in the manner and form alleged. In further answer to the allegations, Respondent states that the State Court Administrative Office never *demand*ed a letter from Respondent's doctor as a prior condition to his return to work. The only applicable letter to Respondent's knowledge, which may possibly apply, is Ms. Delores K. Van Horn's letter, dated May 24, 2002, which in relevant part states:

. . . Because you have left the court on leave, and we have now asked for additional information and have now arranged for an independent medical examination, you *should* advise this office in writing immediately if you have recovered sufficiently to return to work. [Emphasis added.]

Ms. Van Horn's request was not a demand or a prior condition to Respondent returning to work, nor was the request for a letter from Respondent's doctor.

27. Respondent denies the JTC's allegations contained in paragraph 27 as they are untrue.
28. Respondent denies the JTC's allegations and legal conclusions contained in paragraph 28.
29. Respondent denies the JTC's allegations and legal conclusions contained in paragraph 29.

COUNT III
ALLEGATIONS OF HARASSMENT AND INTIMIDATION

30. Respondent lacks sufficient information to answer the JTC's allegations contained in paragraph 30 and can neither admit nor deny the allegations.
31. Respondent denies the allegations for the reason they are untrue in the manner and form alleged. Respondent states that one court employee and three former employees filed lawsuits which contained numerous false claims against the 24th Judicial District Court, the Court's Administrator, the Court's Probation Manager and Respondent. All claims were resolved and dismissed with prejudice and without costs by Judge Wendy M. Baxter in the 3rd Judicial Circuit Court on or about March 4, and March 8, 2002.
32. Respondent denies the allegations for the reason they are untrue in the

manner and form alleged. Respondent states that in accordance with M.C.L. 600.2911, he sent personal letters to certain individuals allowing them an opportunity to retract all non-privileged false statements which they had made about Respondent. Since Complainants who bring allegations to the JTC have absolute immunity for their actions, such communications are privileged and were not, therefore, covered by Respondent's letter. With the exception of two individuals, all others were parties to the civil suits referred to in paragraph 31 of the JTC's allegations. Those individuals had requested Respondent to waive his right to bring any civil action against them, in settlement of their false claims contained in 3rd Judicial Circuit Court case numbers 01-114237-NZ and 01-11529-NZ. Respondent adamantly refused to waive his right to file any proper civil claim against those plaintiff's. Respondent further advised the 24th Judicial District Court's insurance carrier and the Court's attorney that he would not waive any right and in addition, that he would give notice to the plaintiff's of his intent to possibly file a civil action against them. The letters sent on February 19, 2002, were sent prior to the dismissal of their false claims and not subsequently, as alleged by the JTC.

33. Denied as untrue.

34. Respondent denies the JTC's allegations and legal conclusions contained in paragraph 34.

COUNT IV

JUDICIAL TENURE COMMISSION'S USE OF PRIOR ALLEGATIONS TO ESTABLISH PATTERN OF MISCONDUCT AND, ALTERNATIVELY, TO ESTABLISH MENTAL DISABILITY WHICH SIGNIFICANTLY INTERFERES WITH THE CAPACITY TO PERFORM JUDICIAL DUTIES.

Prior to providing any response to the JTC's allegations contained in this Court, Respondent vigorously objects to the JTC's improper presentment of these immaterial, impertinent, and scandalous matters which have been knowingly and intentionally set forth to harass and embarrass Respondent. No pattern of misconduct is necessary or required to be presented by the JTC. Any prior discipline imposed upon Respondent may be considered only in regards to the question of further discipline.

After spending over two years investigating the Respondent, the JTC is well aware there are no valid allegations supporting its position that Respondent is unable to perform his judicial duties. The JTC has not alleged that Respondent has made an improper decision in any legal matter or has acted improperly at any

time in the court room.

Further the JTC has been aware for over two years that Respondent has suffered from depression and has been receiving medical treatment for that condition. Never before, did the JTC ever express a concern that Respondent could not perform his judicial duties.

34. Respondent denies the allegations for the reason they are untrue in the manner and form alleged. There was no credible evidence supporting such allegations. If the JTC had such evidence in its possession at the time, it would not have agreed to a consent resolution in the prior matter. In further answer to the allegations, Respondent states that he answered every specific allegation presented to him by the JTC throughout its nearly two year investigation. The Supreme Court adopted the findings of fact and conclusions of law presented by the JTC. Included within the Supreme Court's findings of facts was paragraph 5, which stated in its entirety:

5. In addition to the acts of misconduct described above and admitted to by the respondent, there is credible evidence supporting numerous other allegations of misconduct, including (a) sexual harassment of court employees and others, (b) misuse of court time, personnel, facilities, and other resources, (c) failure to treat employees fairly and with courtesy and respect, (d) failure to discharge administrative duties diligently and professionally, and

(e) hostile and aggressive conduct off the bench.

The JTC is well aware that Respondent did not agree with the JTC's finding of facts and that Respondent adamantly denied such findings.

35. Respondent denies the allegations for the reason they are untrue.
36. Respondent denies the allegations for the reason they are untrue in the manner and form alleged. In further answer to the allegations, Respondent is astonished by the JTC's inconceivable allegation that: *the prior matter was a negotiated resolution, strictly limited to issues of judicial misconduct*. Throughout its previous investigation, which lasted nearly two years, Respondent was continually required to respond to specific allegations concerning his mental health. The JTC has been well aware for over two years that Respondent suffers from depression. Based upon information and belief, the JTC subpoenaed all of Respondent's medical files from his mental health care doctors.

The JTC aggressively pursued every possibility of formulating a formal complaint to claim Respondent suffered from a mental disability which significantly interfered with his capacity to perform his judicial duties. The JTC demanded the inclusion of paragraph 3, as previously

stated. Furthermore, the JTC refused to permit paragraph 3 to include the word "*depression*" as requested by Respondent.

The prior discipline as ordered by the Michigan Supreme Court, which the JTC refers to as a *negotiated resolution*, included numerous issues, allegations and investigations concerning Respondent's mental health. However, by entering into the negotiated settlement, the JTC itself determined that Respondent's depression never affected his judicial decisions and that he did not suffer from a mental disability which significantly interferes with his capacity to perform his judicial duties.

COUNT IV - A
ALLEGED, AGGRESSIVE, RETALIATORY
AND DISRESPECTFUL CONDUCT

Prior to providing any response to the JTC's allegations contained hereafter, Respondent vigorously objects to the JTC's improper presentment of these immaterial, impertinent, and scandalous matters which have been knowingly and intentionally stated only to harass and embarrass Respondent. The JTC is well aware that those allegations were denied by Respondent and were disposed of by Respondent's consent to the JTC's *Decision and Recommendation for Order of*

Discipline of December 10, 2001. As stated within paragraphs 5 and 6 of the Commission's *Decision and Recommendation for Order of Discipline*:

5. In **addition** to the acts of misconduct described above and admitted to by the Respondent, there is credible evidence supporting numerous other allegations of misconduct, including (a) sexual harassment of court employees and others, (b) misuse of court time, personnel, facilities, and other resources, (c) failure to treat employees fairly and with courtesy and respect, (d) failure to discharge administrative duties diligently and professionally, and (e) hostile and aggressive conduct off the bench. [Emphasis added.]
6. Although Respondent strongly denies the allegations referred to in Paragraph 5, he admits the ones set forth in Paragraph 3 and its sub-paragraphs, and **he has consented to the sanction recommended below to resolve all the allegations pending against him.** [Emphasis added.]

Respondent's intent in agreeing to the imposed discipline was clearly to resolve all existing allegations at that time.

Furthermore, the JTC is aware that on November 29, 2001, Respondent signed a Waiver and Consent which contained the following:

I, Hon. Gerard Trudel, hereby knowingly, intentionally, and voluntarily waive my rights to a hearing on the issues raised in

this matter, to a Master's Report setting forth findings of fact and conclusions of law with respect to the issues raised, and de novo review of a factual record by the Commission prior to the issuance of its Decision and Recommendation for Order of Discipline set forth above, and specifically to the Commission's findings of fact, conclusions of law and recommendation that, among other things, the Supreme Court enter an order publicly censuring me, and suspending me for 90 days without pay. (Emphasis added).

The JTC offered Respondent a written agreement to waive his right to a hearing on all pending allegations, and to the JTC's findings of fact and conclusions of law on all pending allegations (being Respondent's consideration to the contract), in order to receive the terms of discipline contained within the Waiver and Consent (being the consideration provided by the JTC to the contract). Respondent accepted the JTC's written offer by signing the Waiver and Consent on November 29, 2001. The JTC presented its written agreement with Respondent to the Supreme Court in its *Decision and Recommendation for Order of Discipline*. The Supreme Court adopted the JTC's recommendation of discipline on all pending allegations. [See, *In re Trudel*, 465 Mich 1313 (2002).] In doing so, the Supreme

Court stated:

Applying those criteria to the present case, **while mindful of the agreement between the Commission and the respondent**, we accept the recommendation of the Commission and order the following discipline:

We publicly censure the respondent judge and suspend him, without pay, from the performance of his judicial duties for a period of ninety days, effective the next business day following entry of the order. [Emphasis added.] See, *In re Trudel*, supra.

The allegations contained in the Formal Complaint in Count IV, are an unconscionable public breach of the written agreement entered into between the JTC and Respondent, which was acknowledged and adopted by the Supreme Court. The agreement became binding upon the JTC and Respondent by Order of the Supreme Court on January 23, 2002. The intentional breach of the written agreement by the JTC is an unethical and shameless act against Respondent, which has caused irreparable harm to this process.

38. Respondent denies the allegations for the reason they are untrue in the manner and form alleged. Respondent denies the alleged scenario and quotes presented by the JTC as being untrue.

39. Respondent denies the allegations for the reason they are untrue in the

manner and form alleged. In further answer to the allegations, Respondent recalls his attorney stating something in regards to Respondent not wasting his time by acknowledging Mr. Munro's continual sophomoric taunts.

40. Respondent denies the allegations for the reason they are untrue in the manner and form alleged. Respondent denies the scenario and quotes presented by the JTC as being untrue.
41. Respondent denies the allegations for the reason they are untrue in the manner and form alleged. In further answer to the allegations, Respondent does not specifically recall the date of the incident. However, Respondent does recall that on the occasion in question, Michael Bowdell, Kyle Tertzag, Frank Tucci and Respondent were in Mr. Bowdell's office playing euchre for a few hours in the evening. Respondent had been a personal friend of all three individuals, long before their election to public office.

After Kyle Tertzag left for the evening, Michael Bowdell and Respondent had a discussion. Bowdell and Respondent had always engaged in spirited discussions together. At one point, Mr. Bowdell, while standing behind his desk (while Respondent was sitting on the other side of the desk, with his arm on the desk), leaned forward and loudly stated his viewpoint to Respondent. Numerous times Respondent asked Bowdell to sit down and

relax. Finally, when Respondent stood up, Bowdell leaned forward again while vigorously expressing his viewpoint. When Bowdell moved forward over the desk towards Respondent, Respondent then moved Bowdell backwards by putting hands upon his shoulders.

Mr. Bowdell stumbled backwards. Frank Tucci was present at all relevant times. Bowdell, Tucci and Respondent have had numerous laughs about the event since its occurrence.

42. Respondent denies the allegations for the reason they are untrue.

43. Respondent denies the allegations for the reason they are untrue.

(a) Respondent denies the allegations for the reason they are untrue in the manner and form alleged. In further answering this allegation, Respondent incorporates his statements previously presented to the JTC and his statement provided to the Michigan State Police about this matter, which based upon information and belief, are in possession of the JTC.

(b) Respondent denies the allegations for the reason they are untrue in the manner and form alleged. In further answering this allegation, Respondent incorporates his statements

previously presented to the JTC and his statement provided to the Michigan State Police about this matter, which based upon information and belief, are in possession of the JTC.

- (c) Respondent denies the allegations for the reason they are untrue in the manner and form alleged. In further answering, Respondent incorporates his statements previously presented to the JTC and his statement provided to the Michigan State Police about this matter, which based upon information and belief, are in possession of the JTC.
- (d) Respondent denies the allegations for the reason they are untrue in the manner and form alleged. In further answering this allegation Respondent admits that he was at Dunleavey's Pub in Allen Park on the date in question, however, Respondent has no recollection of the specific date. Respondent admits that he was enjoying a visit with friends, Mark Gahry, Kirk Brayman and Marty DeLoach. All three individuals were employed by the City of Allen Park.

Based upon Respondent's recollection, Kyle Tertzag, who was present, came over to the table where Respondent was sitting with his

friends. Mr. Tertzag and Respondent had a personal disagreement between themselves at the time. The disagreement was between personal friends and the subject was of no concern to others. Respondent admits that when Mr. Tertzag extended his hand towards him, Respondent may have stated some profanity. Respondent does not recall, nor does he believe he used the word "asshole."

- (c) Respondent denies the allegations for the reason they are untrue and represent a distortion of the actual events referred to.

- 44. Respondent denies the JTC's allegations and legal conclusions as contained in paragraph 44 as being untrue.

COUNT IV - B
ALLEGED SEXUAL HARASSMENT/RACIAL INSENSITIVITY

- 45. Respondent denies the allegations for the reason they are untrue in the manner and form alleged.

- (a) Respondent denies the allegations for the reason they are untrue in the manner and form alleged. Respondent further incorporates all relevant prior statements provided to the JTC.

- (b) Respondent denies the allegations for the reason they are untrue

in the manner and form alleged. Respondent further incorporates all relevant prior statements provided to the JTC.

- (c) Respondent denies the allegations for the reason they are untrue in the manner and form alleged. Respondent further incorporates all relevant prior statements provided to the JTC.

46. Respondent denies the allegations for the reason they are untrue in the manner and form alleged. Respondent takes the greatest personal offense to the JTC's presentment of these knowingly false allegations. The JTC is well aware how the Respondent was unyielding in his denial of these allegations. The JTC knows that Respondent continually refused to accept a negotiated agreement, solely because of the JTC's desire to include these false allegations. Respondent further incorporates all relevant prior statements provided to the JTC in regards to the following false allegations:

- (a) Respondent vehemently denies the allegation as untrue.
- (b) Respondent vehemently denies the allegation as untrue. Respondent further states that the alleged accuser is widely regarded as a racist and a liar.
- (c) Respondent vehemently denies the allegations for

the reason they are untrue.

47. Respondent denies the JTC's allegations and legal conclusions as contained in paragraph 47.
48. Respondent denies the allegations for the reason they are untrue in the manner and form alleged. Respondent further incorporates all relevant prior statements provided to the JTC in regards to the following allegations:

(a) Respondent denies the allegations for the reason they are untrue in the manner and form alleged. Respondent cannot recall the last personal conversation he may have had with the listed individuals, but he spoke to all individuals when necessary for work purposes. Nearly all of these individuals were in continual contact with Respondent's former wife prior to his divorce, throughout the divorce proceedings and throughout their improper law suit which nearly all of the individuals listed filed against the 24th Judicial District Court, Respondent, the Court's Administrator and probation manager. Respondent is aware that during such time periods, nearly all of the listed individuals provided numerous false accusations to Respondent's former wife. Respondent is also aware that some

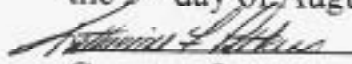
of the listed individuals are still in constant contact with his former wife and that they regularly report information concerning Respondent's daily life and whereabouts to her.

- (b) Respondent denies the allegations for the reason they are untrue.
- (c) Respondent denies the allegations for the reason they are untrue in the manner and form alleged. Any decisions to make transfers were carried out based upon legitimate operational concerns.
- (d) Respondent denies the allegations for the reason they are untrue.
- (e) Respondent denies the allegations for the reason they are untrue in the manner and form alleged. Any action taken by Respondent was carried out in the furtherance of legitimate operational concerns.

49. Respondent denies the JTC's allegations and legal conclusions as contained in paragraph 49.

Dated: 5 AUG 22


Hon. Gerard Trudel

Subscribed and Sworn to
the 5th day of August, 2002.
, Notary.

County of: Wayne
State of Michigan

KATHERINE F. PETKUS
Notary Public, Wayne County, MI
Acting in Wayne Co., MI
My Commission Expires 11/19/2005

AFFIRMATIVE DEFENSES


Respondent, Judge Gerard Trudel, sets forth the following affirmative defenses:

- 1) Laches – The JTC had prior notice of allegations set forth in Formal Complaint 68, or portions thereof, some of which date back to the mid-1990's. It will be unfair/inequitable to require Respondent to defend against these stale allegations at this time.
- 2) Laches – Even if the JTC did not have prior notice of the alleged acts referenced in paragraph 1 above, it will be unfair/inequitable to compel Respondent to defend against these allegations at this time. Witnesses' memories may have faded, witnesses may be unavailable and evidence which could have been produced at or near the time of the alleged incidents may no

longer be available.

- 3) Res Judicata – The JTC is prohibited from re-litigating matters previously disposed of and/or dismissed as part of the consent resolution referenced in Formal Complaint 68 and Respondent's Answer.
- 4) Collateral Estoppel – The JTC is prohibited from re-litigating matters previously disposed of and/or dismissed as part of the consent resolution referenced in Formal Complaint 68 and Respondent's Answer.
- 5) Double Jeopardy – Although this matter is not criminal in nature, disciplinary proceedings do carry with them punitive aspects, and for that reason have on occasion been referred to as quasi-criminal. The JTC in this matter is attempting to re-litigate matters previously disposed of and/or dismissed as part of the consent resolution referenced in Formal Complaint 68 and Respondent's Answer.

Respectfully submitted by:

 8-5-02

Philip J. Thomas (P31298)
Attorney for Respondent
10 South Main, Ste. 310
Mt. Clemens, MI 48043
(586) 468-8800

PROOF OF SERVICE

The undersigned certifies that copies of this pleading were served via hand delivery on August 5, 2002, to the Judicial Tenure Commission at its address of record, and the Master by U.S. Mail at his address of record.

The above statement is true to the best of my knowledge, information and belief.

Dated: 8-5-02


Philip J. Thomas